



Recommendation 1648 (2004)¹

Consequences of European Union enlargement for freedom of movement between Council of Europe member states

Parliamentary Assembly

1. There is a widespread fear that after May 2004, following the current round of European Union enlargement, Europe will be administratively divided in two as a result of the expansion of the Schengen visa system. Such an eventuality would create an excessive impediment to the free movement of persons between Council of Europe member states, with consequences relevant to a number of distinct issues, including tourist travel, business travel, diplomatic travel, cross-border small traffic in goods, international labour migration and communal and cultural links. These may in turn result in national and international tensions based on nationality and ethnicity.

2. As stated in its Statute, the Council of Europe is based on a common heritage of spiritual and moral values which unite the peoples of its member states and which are the true source of the individual freedom, political liberty and rule of law which underlie European democracy. A closer unity between European states is needed for the maintenance and further realisation of these ideals and in the interests of social and economic progress. Free movement of persons to the greatest possible extent throughout Europe is essential to this project and, indeed, to national and individual adherence to our common principles. International co-operation under the auspices of both the Council of Europe and the European Union has helped to establish bonds of understanding, trust and friendship across the continent.

3. These principles, along with the significance of the uniting mission of the Council of Europe, remain vital and relevant today. In this respect, the Parliamentary Assembly recalls its Recommendations 879 (1979) on the movement of persons between the member states of the Council of Europe, 990 (1984) on clandestine migration in Europe, 1014 (1985) on the entry visas required of Turkish nationals by certain Council of Europe member states, 1373 (1998) on freedom of movement and the issue of visas to the members of the Parliamentary Assembly of the Council of Europe and 1579 (2002) on the enlargement of the European Union and the Kaliningrad region. The Assembly is glad to note the recent agreement between Lithuania, the Russian Federation and the European Union on the Kaliningrad region. It also takes note of recent documents and statements of the European Council, the Council of the European Union and the European Commission which recognise these principles and agree on the importance of avoiding the creation of new dividing lines.

4. The Schengen system is intended to establish free movement of persons within a multinational territory (the Schengen area) without internal borders. The public order and security concerns arising from this are addressed by two sets of measures: the first relating to visa policy and external border control, intended to prevent individuals who represent a threat to public order or security from entering the Schengen area; the second concerning police and security co-operation, designed to enhance national criminal justice systems' ability to operate between states within the borderless Schengen area so as to improve their ability to deal with all forms of transnational and international crime.

5. The Assembly notes that the Council of Europe has, since the early years of its existence, also been active in pursuing these same aims. Regarding free movement of persons, it recalls in particular the 1955 European Convention on Establishment (ETS No. 19) and the 1957 European Agreement on Regulations

1. Assembly debate on 30 January 2004 (8th Sitting) (see [Doc. 9979](#), report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Shybko; and [Doc.10025](#), opinion of the Political Affairs Committee, rapporteur: Mr Severin). Text adopted by the Assembly on 30 January 2004 (8th Sitting).



Governing the Movement of Persons between Member States of the Council of Europe (ETS No. 25), along with the European Convention on the Legal Status of Migrant Workers (ETS No. 93) and the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 106). With respect to criminal justice and public order, it recalls in particular the 1957 European Convention on Extradition (ETS No. 24) and its Additional Protocols (ETS Nos. 86 and 98), the 1959 European Convention on Mutual Assistance in Criminal Matters (ETS No. 30) and its Additional Protocols (ETS No. 99 and 182), the 1970 European Convention on the International Validity of Criminal Judgments (ETS No. 70), the 1977 European Convention on the Suppression of Terrorism (ETS No. 90) and its amending Protocol (ETS No. 190) and the 1999 Criminal Law Convention on Corruption (ETS No. 173) and Civil Law Convention on Corruption (ETS No. 174), along with the Convention on the Transfer of Sentenced Persons (ETS No. 112) and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141); it is significant that several of these instruments form the basis of the Schengen system's own mechanisms. The Assembly also takes note of the Group of States Against Corruption (GRECO).

6. Whilst the European Union has achieved a level of integration exceeding that of the Council of Europe, the Assembly nevertheless believes that the combination of the Council of Europe's treaties in the fields of free movement of persons and of police and judicial co-operation bears comparison to the Schengen system not only in purpose, but also in potential effectiveness. Wider ratification, along with appropriate co-ordination and, if necessary, amendment of these treaties, could lead to the development of a framework allowing greater freedom of movement throughout greater Europe: less restricted than within the Schengen area, but sufficiently enhanced so as to reflect the unity and cohesive integrity of Council of Europe member states.

7. As the only democratic body representative of citizens from the length and breadth of Europe, the Assembly states its firm opposition to any measures which might act to divide the peoples and states of a continent which has only recently achieved a historic level of political, social, economic and cultural unity and harmony. Accordingly, it asks that every effort be made to avoid this prospect.

8. The Assembly recommends that member states:

8.1. devote their utmost care to the conduct of a frank, constructive political dialogue between European Union member states and non-member states, as well as at the sub-regional level, ensuring that the appearance of new divisions on the European continent is avoided at all costs and guaranteeing freedom of movement between all members;

8.2. in so far as they have not already done so, ratify and implement without delay the conventions, agreements and other treaties listed in paragraph 5 above, and become members of GRECO;

8.3. introduce, on the basis of reciprocity, provisions enabling the nationals of Council of Europe member states who hold diplomatic or service passports to make official journeys without a visa;

8.4. in relation to those member states which are also members of the European Union (including those which may accede in May 2004), adopt liberal measures with respect to citizens of other Council of Europe member states in those areas of immigration policy not subject to European Union jurisdiction, particularly so as to simplify formalities for obtaining visas and facilitate border-crossing;

8.5. in relation to those member states which are not members of the European Union, ensure that they take action to facilitate positive developments in areas of reciprocity, such as the adoption of minimal visa fees and the conclusion of bilateral and multilateral readmission agreements;

8.6. facilitate the crossing of borders by setting up at border checkpoints special corridors reserved for the nationals of Council of Europe member states;

8.7. in respect of those member states whose common borders are already external borders of the European Union, or will be following enlargement of the European Union, actively co-operate to protect and secure their common borders, as well as the external borders of those Council of Europe member states adjoining the European Union, and engage in institutionalised co-operation concerning the exchange of information relating to the illicit trafficking of persons and goods;

8.8. make good use of their authority to issue long-term national visas for citizens of Council of Europe member states;

8.9. train the border guards, notably with the aim of dispelling the received ideas and stereotypes which they may entertain concerning foreigners and humanising their contacts with nationals of foreign countries travelling for legitimate reasons.

9. The Assembly also recommends that states party to the 1990 Schengen Convention:
 - 9.1. expand their consular services in other Council of Europe member states so as to ensure that visas are issued quickly, efficiently and conveniently and in keeping with human dignity. In this respect, an administrative procedure for control of the processing of visa applications should be instituted and systematised in all consulates;
 - 9.2. introduce a presumption regarding visas whereby anyone who makes an application for a visa should benefit from the presumption that it will be issued. Any refusal should be based on substantiated reasons meeting specific criteria which would withstand a transparency test;
 - 9.3. increase the number of, and improve the facilities at, border crossings with non-European Union member neighbouring states, in particular through the use of advanced electronic technology;
 - 9.4. take steps to make more widely known to the general public the procedure enabling individuals to acquaint themselves with the information held concerning them in the Schengen Information System (SIS) and, if necessary, to have any inaccurate information rectified.
10. In addition, the Assembly recommends that the European Union:
 - 10.1. extend, at the earliest opportunity, the list of third countries whose nationals are exempt from the requirement to be in possession of a visa when crossing the external borders of the Schengen area to include all Council of Europe member states which are not also members of the European Union, and meanwhile:
 - 10.2. establish a presumption that citizens of states parties to the Council of Europe treaties mentioned in the 1990 Schengen Convention (ETS Nos. 24, 30 and 112, plus their relevant protocols) do not require visas for entry into or circulation within the Schengen area, that presumption being strengthened in relation to a state's also being party to other Council of Europe treaties in the field of public order and security (including ETS Nos. 70, 90, 141, 173 and 174 and their relevant protocols);
 - 10.3. for those member states not able to benefit from this presumption, make visa requirements and procedures more rapid and flexible, inter alia by:
 - a. encouraging the practice of issuing multiple-entry visas of five-year duration, particularly to residents of border regions and those engaged in legitimate small cross-border traffic;
 - b. maintaining the level of visa fees at the lowest level possible, if possible making them free of charge;
 - c. requesting documents in support of visa applications and attendance for personal interviews only in cases of absolute necessity;
 - d. ensuring that examination of documents and the conduct of personal interviews are fully respectful of individual dignity and privacy;
 - e. allowing visa applications to be made by post or by electronic means, in so far as is allowed by the need to verify documents' authenticity or conduct personal interviews;
 - f. ensuring that refusal of admission at borders of those with valid visas is an exceptional measure taken only when justified by objectively determined reasons;
 - g. establishing special provisions for political and diplomatic travel by citizens of those Council of Europe member states which are not also parties to the 1990 Schengen Convention, such as by exempting holders of diplomatic passports and those on certified official missions from visa requirements;
 - h. concluding bilateral readmission agreements with those Council of Europe member states which are not also members of the European Union and in relation to which such agreements do not already exist;
 - i. providing financial and material assistance to new European Union member states, to ensure that they are able to respond promptly and efficiently to visa applications from citizens of other Council of Europe member states;
 - j. studying the possibility and feasibility of creating 'Euro-consulates' whose specialty would be to issue Schengen visas and process applications for them;
 - 10.4. assist those countries which will be neighbours of the enlarged European Union in reinforcing their efforts to prevent illegal migration, in particular trafficking in persons;

10.5. consider ratifying the Council of Europe's treaties relevant to those areas of freedom of movement, criminal justice and public order for which it has supranational jurisdiction, and join the GRECO; and

10.6. within this pan-European legal framework, develop immigration policies which allow the greatest possible degree of freedom of movement of persons throughout Europe and encourage the integration of migrants in the host societies and states.

11. Finally, the Assembly recommends that the Committee of Ministers:

11.1. undertake a comprehensive study ? involving the committees established under relevant Council of Europe treaties, representatives of the European Union and the Assembly ? into how existing Council of Europe treaties concerning free movement of persons, criminal justice and public order may be more widely ratified, implemented, co-ordinated and (if necessary) amended or completed, including through the preparation, signature and implementation of a new European convention, so as to establish a comprehensive legal framework within which the greatest possible degree of freedom of movement of persons may be established throughout Europe;

11.2. establish principles for the standardisation of travel documents of Council of Europe member states, so as to provide safeguards against forgery and fraudulent use, and thus facilitate the liberalisation of visa regimes and immigration policies;

11.3. begin efforts to harmonise, under the auspices of the Council of Europe, and in accordance with the guidelines laid down in Parliamentary Assembly [Recommendation 1624 \(2003\)](#) on a common policy on migration and asylum, Council of Europe member states' legislation and practice relating to this subject.